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19 **UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

21 JENNY LISETTE FLORES; *et al.*,

22 Plaintiffs,

23 v.

24 WILLIAM P. BARR, Attorney
25 General of the United States; *et al.*,

26 Defendants.

Case No. CV 85-4544-DMG

RESPONSE TO PLAINTIFFS'
REQUEST FOR A TEMPORARY
RESTRAINING ORDER

I. INTRODUCTION

On June 26, 2019, Plaintiffs filed an ex parte application seeking a temporary restraining order (“TRO”) against the government. In accordance with the Court’s Procedures regarding ex parte applications, Defendants hereby file this response within 24 hours to raise for the Court their initial opposition points to Plaintiffs’ TRO request.

Plaintiffs ask this Court to order injunctive relief that goes beyond simply ordering that Defendants comply with the plain terms of the *Flores* Settlement Agreement (“Agreement”). The relief sought would impose extensive obligations—including sanctions—on the government. Such relief is not appropriately sought through a TRO. Moreover, in seeking relief through sanctions and the imposition of extensive obligations on the government, Plaintiffs must establish their claims by clear and convincing evidence. In light of the expanded relief sought by Plaintiffs, and the exacting burden Plaintiffs must meet to obtain such relief, Defendants should be provided an opportunity to fully review and respond to the extensive briefing and evidence that Plaintiffs have filed with this Court before the Court rules. Therefore, Defendants request that the Court deny the TRO, and set a schedule for briefing these issues that provides Defendants with a full and fair opportunity to respond to the allegations that Plaintiffs have lodged against them. In the alternative, to allow for expeditious consideration of the concerns raised in Plaintiffs’ application related

1 to the Rio Grande Valley and El Paso Border Patrol Stations, Defendants are willing
 2 to agree to an expedited mediation process to address these concerns in front of the
 3
 4 *Flores* Special Master.

5 **II. ARGUMENT**

6 Plaintiffs seek a TRO from this Court requiring:

7
 8 (1) an immediate inspection of all CBP Facilities [in the El Paso and
 9 Rio Grande Valley Border Patrol Sectors] by a public health expert
 10 authorized to mandate a remediation plan that Defendants must
 11 follow to make these facilities safe and sanitary, (2) immediate
 12 access to the Facilities by independent medical professionals
 13 appointed by Plaintiffs' class counsel or the Court-appointed Special
 14 Master who can assess the medical needs of the children and triage
 15 appropriately, and [sic] (3) deployment of an intensive case
 16 management team to focus on expediting the release of Category 1
 17 and Category 2 children (as classified in The Trafficking Victims
 18 Protection Reauthorization Act) to alleviate the backlog caused by
 19 the inadequate Office of Refugee Replacement placement array, and
 20 (4) [] an Order finding Defendants in contempt of Court, with a
 21 suitable and appropriate remedy to be determined by the Court.

22 Proposed Order, ECF No. 572-6.

23 A TRO should not issue here, because this is not the type of request for which
 24 a TRO is appropriately sought. The purpose of a TRO is to preserve the status quo
 25 before a preliminary injunction hearing may be held. *See Granny Goose Foods, Inc.*
 26 *v. Teamsters*, 415 U.S. 423, 438–39 (1974) (noting that TROs “should be restricted
 to serving their underlying purpose of preserving the status quo and preventing
 irreparable harm just so long as is necessary to hold a hearing, and no longer”); *see*
 also *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006)

(noting that “courts have recognized very few circumstances justifying the issuance of an ex parte TRO”). Here, Plaintiffs seek to alter – not preserve – the status quo. For example, Plaintiffs’ proposed remedies would require CBP to alter operations to allow for the inspections Plaintiffs are seeking, and then to potentially comply with a “remediation plan.” Likewise, the request to “deploy” an “intensive case management team to focus on expediting the release of Category 1 and Category 2 children,” goes beyond the status quo, and appears to impose remedies on the Office of Refugee Resettlement (“ORR”) when no allegations against ORR are included in the memorandum of points and authorities. Plaintiffs moreover ask the Court to impose these substantial obligations on Defendants before Defendants have any chance to respond to their allegations or obtain a full and fair adjudication of the claims before the Court. Because Plaintiffs are seeking relief that is not appropriately sought through a TRO, the Court should deny Plaintiffs’ request.

Further, Plaintiffs’ TRO request is far more than a simple motion to enforce the terms of the Agreement, and it seeks relief beyond what is available under the Agreement. Plaintiffs ask the Court to order coercive remedies. Even if the Court does have the authority to order the remedies that Plaintiffs seek, which Defendants reserve the right to dispute, the Court’s only power to order Defendants to take actions such as these that go far beyond the scope of the Agreement is based on the Court’s inherent powers to enforce the Agreement and its own orders. Plaintiffs also

1 explicitly seek sanctions against Defendants. Requests for coercive remedies and
2 sanctions such as the ones made by Plaintiffs fall under the framework of a civil
3 contempt proceeding, requiring Plaintiffs to bear the burden of proof by clear and
4 convincing evidence. *See Bailey v. Roob*, 567 F.3d 930, 934-35 (7th Cir. 2009) (“The
5 parties agree that this circuit’s case law requires the party seeking sanctions to
6 demonstrate that the opposing party is in violation of a court order by clear and
7 convincing evidence.”); *Kelly v. Wengler*, 822 F.3d 1085, 1097 (9th Cir. 2016)
8 (discussing how court-ordered remedies designed to ensure compliance with a
9 settlement agreement, and to cure breach, are properly considered under civil
10 contempt standards). Given Plaintiffs’ heavy burden of proof, the Court should
11 decline to reach any conclusions as to Plaintiffs’ allegations without affording the
12 government a full and fair opportunity to reply to the allegations that Plaintiffs have
13 lodged against them. A TRO does not provide such an opportunity, and is not the
14 appropriate avenue for Plaintiffs to seek the relief they are requesting, and the Court
15 should deny this request.

21 **III. CONCLUSION**

22 For the foregoing reasons, Defendants request that the Court deny the TRO,
23 and set a schedule for briefing these issues that provides Defendants with a full and
24 fair opportunity to respond to the allegations that Plaintiffs have lodged against
25 them. In the alternative, to allow for expeditious consideration of the concerns raised
26

1 in Plaintiffs' application, the Court should order the parties to engage in an expedited
2 mediation process in front of the *Flores* Special Master to address these concerns.
3

4 DATED: June 27, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2019, I served the foregoing pleading on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Sarah B. Fabian
SARAH B. FABIAN
U.S. Department of Justice
District Court Section
Office of Immigration Litigation

Attorney for Defendants